

PARALEGAL RULES OF CONDUCT

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Rule 1 – Citation and Interpretation

1.01 Citation

1.01 (1) These Rules may be cited as the *Paralegal Rules of Conduct*.

1.02 Interpretation

Definitions

1.02 In these Rules,

“client” includes a client of the paralegal firm of which the paralegal is a partner or employee, whether or not the paralegal handles the client’s work;

“Law Society” means the Law Society of Upper Canada;

“licensee” means,

- (a) a person licensed to practise law in Ontario as a barrister and solicitor, or
- (b) a person licensed to provide legal services in Ontario;

“paralegal” means a paralegal licensee of the Law Society;

“paralegal firm” includes one or more paralegals practising in a sole proprietorship, partnership or professional corporation;

"Rules" means the *Paralegal Rules of Conduct*;

“tribunal” includes courts, boards, arbitrators, mediators, administrative agencies, and bodies that resolve disputes, regardless of their function or the informality of their procedures.

Singular and Plural Words

(2) In these Rules, words importing the singular number include more than one person, party, or thing of the same kind and a word interpreted in the singular number has a corresponding meaning when interpreted in the plural.

What Constitutes Consent

(3) A consent required under these Rules may be given in writing or orally.

(4) If the consent of more than one person is required and,

- (a) the consent is in writing, each may sign a separate document recording his or her consent; or

- (b) the consent is oral, the paralegal shall give each person a separate letter recording his or her consent.

1.03 Manner of Interpretation

Standards of Paralegals

1.03 These Rules shall be interpreted in a way that recognizes that,

- (a) a paralegal has a duty to provide legal services and discharge all responsibilities to clients, tribunals, the public and other licensees honourably and with integrity;
- (b) a paralegal, as a provider of legal services, has an important role to play in a free and democratic society and in the administration of justice and a responsibility to recognize the diversity of the Ontario community, to protect the dignity of individuals, and to respect human rights laws in force in Ontario;
- (c) a paralegal has a duty to uphold the standards and reputation of the paralegal profession and to assist in the advancement of its goals, organizations and institutions;
- (d) the Rules are intended to express to licensees and the public, the high ethical ideals of paralegals;
- (e) the Rules are intended to specify the basis on which paralegals may be disciplined;
and
- (f) the Rules cannot address every situation, and a paralegal should observe the Rules in the spirit, as well as in the letter.

Rule 2 – Professionalism

2.01 Integrity and Civility

Integrity

2.01 (1) A paralegal shall conduct himself or herself in such a way as to maintain the integrity of the paralegal profession.

(2) Paralegals shall make legal services available to the public in an efficient and convenient way that commands respect and confidence and is compatible with the integrity and independence of the paralegal profession.

Civility

(3) A paralegal shall be courteous and civil, and shall act in good faith with all persons with whom he or she has dealings in the course of his or her practice.

Outside Interests and Public Office

(4) A paralegal who engages in another profession, business, occupation or other outside interest or who holds public office concurrently with the provision of legal services, shall not allow the outside interest or public office to jeopardize the paralegal's integrity, independence, or competence.

(5) A paralegal shall not allow involvement in an outside interest or public office to impair the exercise of his or her independent judgment on behalf of a client.

Acting as Mediator

(6) A paralegal who acts as a mediator shall, at the outset of the mediation, ensure that the parties to it understand fully that the paralegal is not acting as a representative for either party but, as mediator, is acting to assist the parties to resolve the issues in dispute.

2.02 Undertakings

2.02 (1) A paralegal shall fulfil every undertaking given and shall not give an undertaking that cannot be fulfilled.

(2) Except in exceptional circumstances, a paralegal shall give his or her undertaking in writing or confirm it in writing as soon as practicable after giving it.

(3) Unless clearly stated in the undertaking, a paralegal's undertaking is a personal promise and it is his or her personal responsibility.

2.03 Harassment and Discrimination

Application of *Human Rights Code*

2.03 (1) The principles of the Ontario *Human Rights Code* and related case law apply to the interpretation of this rule.

(2) A term used in this rule that is defined in the *Human Rights Code* has the same meaning as in the *Human Rights Code*.

Harassment

(3) A paralegal shall not engage in sexual or other forms of harassment of a colleague, a staff member, a client or any other person on the ground of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or disability.

Discrimination

(4) A paralegal shall respect the requirements of human rights laws in force in Ontario and without restricting the generality of the foregoing, a paralegal shall not discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, or disability with respect to the employment of others or in dealings with other licensees or any other person.

(5) The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant.

Services

(6) A paralegal shall ensure that no one is denied services or receives inferior service on the basis of the grounds set out in this rule.

Employment Practices

(7) A paralegal shall ensure that his or her employment practices do not offend this rule.

Rule 3 – Duty to Clients

3.01 Competence

Required Standard

3.01 (1) A paralegal shall perform any services undertaken on a client's behalf to the standard of a competent paralegal.

(2) A paralegal shall be alert to recognize any lack of competence for a particular task and the disservice that would be done to the client by undertaking that task and shall not undertake a matter without being competent to handle it or being able to become competent without undue delay or expense to the client.

(3) If a paralegal discovers that he or she lacks the competence to complete the task for which he or she has been retained, the paralegal shall either decline to act or obtain the client's consent to retain, consult or collaborate with another licensee who is competent and licensed to perform that task.

Who is Competent

(4) For the purposes of this rule, a competent paralegal is one who has and applies the relevant skills, attributes, and values appropriate to each matter undertaken on behalf of a client including,

- (a) knowing general legal principles and procedures and the substantive law and procedures for the legal services that the paralegal provides;
- (b) investigating facts, identifying issues, ascertaining client objectives, considering possible options, and developing and advising clients on appropriate courses of action;
- (c) implementing, as each matter requires, the chosen course of action through the application of appropriate skills, including,
 - (i) legal research,
 - (ii) analysis,
 - (iii) application of the law to the relevant facts,
 - (iv) writing and drafting,
 - (v) negotiation,
 - (vi) alternative dispute resolution,

- (vii) advocacy, and
- (viii) problem-solving ability;
- (d) representing the client in a conscientious, diligent, and cost-effective manner;
- (e) communicating with the client at all stages of a matter in a timely and effective manner that is appropriate to the age and abilities of the client and engaging the services of an interpreter when necessary;
- (f) answering reasonable client requests in a timely and effective manner;
- (g) ensuring that all applicable deadlines are met;
- (h) managing one's practice effectively;
- (i) applying intellectual capacity, judgment, and deliberation to all functions;
- (j) pursuing appropriate training and development to maintain and enhance knowledge and skills;
- (k) adapting to changing requirements, standards, techniques and practices; and
- (l) complying in letter and in spirit with these Rules.

3.02 Advising Clients

General

3.02 (1) A paralegal shall be honest and candid when advising clients.

(2) A paralegal shall not undertake or provide advice with respect to a matter that is outside his or her permissible scope of practice.

Dishonesty, Fraud, etc. by Client

(3) A paralegal shall not knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct when advising a client and he or she shall not instruct the client on how to violate the law and avoid punishment.

(4) A paralegal shall take all reasonable measures to avoid becoming the tool or dupe of an unscrupulous client or persons associated with such a client.

Settlement

(5) A paralegal shall advise and encourage a client to compromise or settle a dispute whenever it is possible to do so on a reasonable basis, and shall discourage the client from commencing ill-advised legal proceedings.

(6) The paralegal shall consider the use of alternative dispute resolution for every dispute, and,

- (a) if appropriate, the paralegal shall inform the client of the client's alternative dispute resolution options; and
- (b) if so instructed, take steps to pursue those options.

Client Under a Disability

(7) If a client's ability to make decisions is impaired because of minority, mental disability or for some other reason, the paralegal shall, as far as reasonably possible, maintain a normal professional relationship with that client.

(8) If the disability of the client is such that the client no longer has the legal capacity to manage his or her legal affairs, the paralegal shall take such steps as are appropriate to have a lawfully authorized representative appointed.

Medical-Legal Reports

(9) A paralegal who receives a medical-legal report from a physician or health professional that is accompanied by a proviso that it not be shown to the client, shall return the report immediately to the physician or health professional, without making a copy, unless the paralegal has received specific instructions to accept the report on that basis.

(10) A paralegal who receives a medical-legal report from a physician or health professional containing opinions or findings that, if disclosed, might cause harm or injury to the client, shall attempt to dissuade the client from seeing the report but, if the client insists, the paralegal shall produce the report.

(11) If a client insists on seeing a medical-legal report about which the paralegal has reservations for the reasons noted in subrule (10), the paralegal shall recommend that the client attend at the office of the physician or health professional to see the report, in order that the client will have the benefit of the expertise of the physician or health professional in understanding the significance of the conclusions contained in the medical-legal report.

Errors

(12) If, in connection with a matter for which a paralegal is responsible, the paralegal discovers an error or omission that is or may be damaging to the client and that cannot be rectified readily, the paralegal shall,

- (a) promptly inform the client of the error or omission, being careful not to prejudice any rights of indemnity that either of them may have under an insurance, client's protection or indemnity plan, or otherwise;
- (b) recommend that the client obtain legal advice elsewhere concerning any rights the client may have arising from the error or omission; and

- (c) advise the client that in the circumstances, the paralegal may no longer be able to act for the client.

(13) A paralegal shall give prompt notice of any circumstances that he or she may reasonably expect to give rise to a claim, to an insurer or other indemnitor, so that the client's protection from that source will not be prejudiced.

Official Language Rights

(14) A paralegal shall, where appropriate, advise a client who speaks French of the client's language rights, including the right of the client to be served by a paralegal who is competent to provide legal services in the French language.

Claims under Statutory Accident Benefits Schedule

(15) In addition to complying with these Rules, a paralegal when acting as an adviser, consultant or representative to a person making a claim under the Statutory Accident Benefits Schedule to the *Insurance Act* shall comply with that Act, the regulations under that Act and the Code of Conduct for Statutory Accident Benefit Representatives.

3.03 Confidentiality

Confidential Information

3.03 (1) A paralegal shall, at all times, hold in strict confidence all information concerning the business and affairs of a client acquired in the course of their professional relationship and shall not disclose any such information unless expressly or impliedly authorized by the client or required by law to do so.

(2) The duty of confidentiality under subrule (1) continues indefinitely after the paralegal has ceased to act for the client, whether or not differences have arisen between them.

(3) The paralegal shall keep the client's papers and other property out of sight, as well as out of reach, of those not entitled to see them.

Justified or Permitted Disclosure

(4) A paralegal shall disclose confidential information when required by law or by order of a tribunal of competent jurisdiction.

(5) If a paralegal believes upon reasonable grounds that there is an imminent risk to an identifiable person or group of death or serious bodily harm, including serious psychological harm that substantially interferes with health or well-being, the paralegal may disclose, pursuant to judicial order where practicable, confidential information if it is necessary to do so in order to prevent the death or harm.

(6) In order to defend against the allegations, a paralegal may disclose confidential information if it is alleged that the paralegal or his or her employees are,

- (a) guilty of a criminal offence involving a client's affairs;

- (b) civilly liable with respect to a matter involving a client's affairs; or
- (c) guilty of malpractice or misconduct.

(7) A paralegal may disclose confidential information in order to establish or collect his or her fees.

(8) A paralegal shall not disclose more information than is necessary when he or she discloses confidential information as required or permitted by subrules (4), (5), (6) and (7).

3.04 Conflicts of Interest – General

Definition

3.04 (1) In this rule and rule 3.05,

"conflict of interest" or "conflicting interest" means an interest, financial or otherwise,

- (a) that would be likely to affect adversely a paralegal's judgment on behalf of, or loyalty to, a client or prospective client; or
- (b) that a paralegal might be prompted to prefer over the interests of a client or prospective client.

Avoidance of Conflicts of Interest

(2) A paralegal shall not advise or represent more than one side of a dispute.

(3) A paralegal shall not act or continue to act in a matter when there is, or is likely to be, a conflicting interest unless, after disclosure adequate to make an informed decision, the client or prospective client consents.

Acting Against Clients

(4) Unless the client and those involved or associated with the client consent, a paralegal who has acted for a client in a matter shall not thereafter act against the client or against persons who were involved or associated with the client in that matter,

- (a) in the same matter;
- (b) in any related matter; or
- (c) except as provided by subrule (6), in any new matter, if the paralegal has obtained from the other retainer, relevant confidential information.

(5) If a paralegal has acted for a client and obtained confidential information relevant to a matter, the paralegal's partner or employee may act in a subsequent matter against that client, if,

- (a) the former client consents to the paralegal's partner or employee acting; or
- (b) the paralegal's firm establishes that it is appropriate to act in the new matter having regard to all the circumstances, including,
 - (i) the availability of suitable alternative representation,
 - (ii) the measures in place to ensure that no disclosure of the former client's confidential information to the partner or employee having carriage of the new matter will occur,
 - (iii) the extent of prejudice to any party,
 - (iv) the good faith of the parties, and
 - (v) issues affecting the public interest.

(6) If a partner or paralegal employed in a paralegal firm has obtained confidential information from a former client that is relevant to a new matter, no partner or paralegal employed in the firm may act against the former client in the new matter unless the requirements of subrule (5) have been satisfied.

(7) A paralegal may act against a client in a fresh, independent and unrelated matter if previously obtained confidential information is irrelevant to that matter.

Joint Retainers

(8) Before agreeing to act for more than one client in a matter or transaction, a paralegal shall advise the clients that,

- (a) the paralegal has been asked to act for both or all of them;
- (b) no information received in connection with the matter from one client can be treated as confidential so far as any of the others are concerned; and
- (c) if a conflict develops that cannot be resolved, the paralegal cannot continue to act for both or all of them and may have to withdraw completely.

(9) If a paralegal has a continuing relationship with a client for whom he or she acts regularly, before agreeing to act for that client and another client in a matter or transaction, the paralegal shall advise the other client of the continuing relationship and recommend that the client obtain independent legal advice about the joint retainer.

(10) If a paralegal has advised the clients, as provided under subrules (8) and (9), and the parties are content that the paralegal act for both or all of them, the paralegal shall obtain their consent.

(11) Although all parties concerned may consent, a paralegal shall avoid acting for more than one client if it is likely that an issue contentious between them will arise or their interests, rights, or obligations will diverge as the matter progresses.

(12) Except as provided by subrule (14), if a paralegal's clients have consented to a joint retainer and an issue contentious between them or some of them arises, the paralegal shall not advise them on the contentious issue, but shall refer the clients to other licensees, unless,

- (a) the contentious issue does not involve the provision of legal services; and
- (b) the clients are sophisticated.

(13) If the conditions set out in clauses (a) and (b) of subrule (12) are met, the clients may settle the contentious issue by direct negotiation in which the paralegal does not participate.

(14) If a paralegal's clients consent to a joint retainer and also agree that if a contentious issue arises the paralegal may continue to advise one of them and a contentious issue does arise, the paralegal may advise the one client about the contentious matter and shall refer the other or others to another licensee.

3.05 Conflicts of Interest - Transfers

Application of Rule

3.05 (1) This rule applies where a paralegal transfers from one paralegal firm ("former paralegal firm") to another ("new paralegal firm"), and either the transferring paralegal or the new paralegal firm is aware at the time of the transfer or later discovers that,

- (a) the new paralegal firm represents a client in a matter that is the same as or related to a matter in which the former paralegal firm represents its client ("former client");
- (b) the interests of those clients in that matter conflict; and
- (c) the transferring paralegal actually possesses relevant information respecting that matter.

Paralegal Firm Disqualification

(2) If a transferring paralegal actually possesses information respecting a former client that is confidential and that, if disclosed to a paralegal in the new paralegal firm, may prejudice the former client, the new paralegal firm shall cease representation of its client unless the former client consents to the new paralegal firm's continued representation or the new paralegal firm establishes that it is in the interests of justice that it continue to represent the client.

(3) In deciding whether or not it is appropriate to continue to act for a client, the new paralegal firm shall consider all the circumstances including,

- (a) the adequacy and timing of the measures taken to ensure that no disclosure to any paralegal of the new paralegal firm of the former client's confidential information will occur;
- (b) the availability of suitable alternative representation;
- (c) the measures taken to ensure that no disclosure of the former client's confidential information, to any paralegal in the new paralegal firm, will occur;
- (d) the extent of any prejudice to any party;
- (e) the good faith of the parties; and
- (f) issues affecting the public interest.

(4) If a transferring paralegal actually possesses relevant information respecting a former client but that information is not confidential information as described in subrule (2), the paralegal shall execute an affidavit or solemn declaration to that effect, and the new paralegal firm shall,

- (a) notify its client and the former client, or if the former client is represented in that matter by a licensee, notify that licensee, of the relevant circumstances and its intended action under this rule; and
- (b) deliver to the persons referred to in clause (a) a copy of the paralegal's affidavit or solemn declaration executed under this subrule.

Transferring Paralegal Disqualification

(5) A transferring paralegal described in subrule (2) or (4) shall not, unless the former client consents,

- (a) participate in any manner in the new paralegal firm's representation of its client in that matter; or
- (b) disclose any confidential information respecting the former client. (Rule 2.05 (7))

(6) No paralegal in the new paralegal firm shall, unless the former client consents, discuss with a transferring paralegal described in subrule (2) or (4) the new paralegal firm's representation of its client or the former paralegal firm's representation of the former client in that matter.

(7) Anyone who has an interest in, or who represents a party in, a matter referred to in this rule may apply to a tribunal of competent jurisdiction for a determination of any aspect of this rule.

3.06 Doing Business with a Client

Investment by Client where Paralegal has an Interest

3.06 (1) Subject to subrule (2), if a client intends to enter into a transaction with a paralegal who is representing the client, or with a corporation or other entity in which the paralegal has an interest other than a corporation or other entity whose securities are publicly traded, the paralegal, before accepting any retainer,

- (a) shall disclose and explain the nature of the conflicting interest to the client, or, in the case of a potential conflict, how and why it might develop later;
- (b) shall recommend independent legal representation and shall require that the client receive independent legal advice; and
- (c) if the client requests the paralegal to act, shall obtain the client's written consent.

(2) If a client intends to pay for legal services by transferring to a paralegal a share, participation or other interest in property or in an enterprise, the paralegal shall recommend, but need not require, that the client receive independent legal advice before agreeing to act for the client.

(3) This rule does not apply to a transfer of a non-material interest in a publicly traded enterprise.

(4) If the paralegal does not choose to make disclosure of the conflicting interest or cannot do so without breaching a confidence, the paralegal shall decline the retainer.

Borrowing from Clients

(5) A paralegal shall not borrow money from a client unless,

- (a) the client is a lending institution, financial institution, insurance company, trust corporation or any similar institution whose business includes lending money to members of the public; or
- (b) the client is a related person as defined by the *Income Tax Act* (Canada) and the paralegal is able to discharge the onus of proving that the client's interests were fully protected by the nature of the case and by independent legal advice or independent legal representation.

Guarantees by Paralegal

(6) Subject to subrule (7), a paralegal shall not guarantee personally, or otherwise provide security for, any indebtedness in respect of which a client is a borrower or lender.

(7) A paralegal may give a personal guarantee if,

- (a) the lender is a lending institution, financial institution, insurance company, trust company or any similar corporation whose business includes lending money to members of the public, and the lender is directly or indirectly providing funds solely for the paralegal, the paralegal's spouse, parent or child;
- (b) the transaction is for the benefit of a non-profit or charitable institution where the paralegal as a member or supporter of such institution is asked, either individually or together with other members or supporters of the institution to provide a guarantee; or
- (c) the paralegal has entered into a business venture with a client and the lender requires personal guarantees from all participants in the venture as a matter of course and,
 - (i) the paralegal has complied with the requirements of these Rules regarding the avoidance of conflicts of interest, and
 - (ii) the lender and the participants in the venture who are or were clients of the paralegal have received independent legal representation.

3.07 Client Property

Preservation of Client's Property

3.07 (1) A paralegal shall care for a client's property as a careful and prudent owner would when dealing with like property and shall observe all relevant rules and law about the preservation of property entrusted to a fiduciary.

Notification of Receipt of Property

(2) A paralegal shall promptly notify the client of the receipt of any money or other property of the client, unless satisfied that the client is aware they have come into the paralegal's custody.

Identification of Property

(3) A paralegal shall clearly label and identify the client's property and place it in safekeeping, distinguishable from the paralegal's own property.

(4) A paralegal shall maintain such records as necessary to identify a client's property that is in the paralegal's custody.

Accounting and delivery

(5) A paralegal shall account promptly for a client's property that is in the paralegal's custody and upon request, shall deliver it to the order of the client.

(6) If a paralegal is unsure of the proper person to receive a client's property, the paralegal shall apply to a tribunal of competent jurisdiction for direction.

3.08 Withdrawal from Representation

Withdrawal from Representation

3.08 (1) A paralegal shall not withdraw from representation of a client except for good cause and upon notice to the client appropriate in the circumstances.

Optional Withdrawal

(2) Subject to subrules (7), (8) and (9) and the direction of the tribunal, a paralegal may withdraw if there has been a serious loss of confidence between the paralegal and the client.

(3) Without limiting subrule (2), a paralegal may withdraw if the client deceives the paralegal or refuses to accept and act upon the paralegal's advice on a significant point.

(4) A paralegal shall not use the threat of withdrawal as a device to force a hasty decision by the client on a difficult question.

Mandatory Withdrawal

(5) Subject to subrules (7), (8) and (9) and the direction of the tribunal, a paralegal shall withdraw if,

- (a) discharged by the client;
- (b) the paralegal is instructed by the client to do something inconsistent with the paralegal's duty to the tribunal and, following explanation, the client persists in such instructions;
- (c) the client is guilty of dishonourable conduct in the proceedings or is taking a position solely to harass or maliciously injure another;
- (d) it becomes clear that the paralegal's continued representation will lead to a breach of these Rules; or
- (e) the paralegal is not competent to handle the matter.

Non-payment of Fees

(6) Subject to subrules (7), (8) and (9) and the direction of the tribunal, unless serious prejudice to the client would result, a paralegal may withdraw from a case if, after reasonable notice, the client fails to provide funds on account of disbursements or fees.

Withdrawal from Quasi-Criminal and Criminal Cases

(7) A paralegal who has agreed to act in a quasi-criminal or criminal case may withdraw if the interval between the withdrawal and the trial of the case is sufficient to enable the client to obtain alternate representation and to allow such other licensee adequate time for preparation and if the paralegal,

- (a) advises the client, preferably in writing, that the paralegal is withdrawing and the reason for the withdrawal;
- (b) accounts to the client for any monies received on account of fees and disbursements;
- (c) notifies the prosecution in writing that the paralegal is no longer acting; and
- (d) in a case where the paralegal's name appears in the records of the court as acting for the accused, notifies the clerk or registrar of the appropriate court in writing that the paralegal is no longer acting.

(8) A paralegal who has agreed to act in a quasi-criminal or criminal case may not withdraw because of non-payment of fees if the date set for trial is not far enough removed to enable the client to obtain the services of another licensee or to enable another licensee to prepare adequately for trial and if an adjournment of the trial date cannot be obtained without adversely affecting the client's interests.

(9) If,

- (a) a paralegal is justified in withdrawing from a quasi-criminal or criminal case for reasons other than non-payment of fees; and
- (b) there is not a sufficient interval between a notice to the client of the paralegal's intention to withdraw and the date when the case is to be tried to enable the client to obtain the services of another licensee and to enable the new licensee to prepare adequately for trial,

the paralegal, unless instructed otherwise by the client, shall attempt to have the trial date adjourned and may withdraw from the case only with permission of the court before which the case is to be tried.

Manner of Withdrawal

(10) When a paralegal withdraws, he or she shall try to minimize expense and avoid prejudice to the client and shall do all that can reasonably be done to facilitate the orderly transfer of the matter to the successor licensee.

(11) Upon discharge or withdrawal, a paralegal shall,

- (a) deliver to or to the order of the client, all papers and property to which the client is entitled;
- (b) give the client all information that may be required in connection with the case or matter;

- (c) account for all funds of the client then held or previously dealt with, including the refunding of any monies not earned during the representation;
- (d) promptly render an account for outstanding fees and disbursements; and
- (e) cooperate with the successor licensee so as to minimize expense and avoid prejudice to the client.

Duties of Successor Paralegal

(12) Before agreeing to represent a client of a predecessor licensee, a successor paralegal shall be satisfied that the predecessor has withdrawn or has been discharged by the client.

Rule 4 – Advocacy

4.01 The Paralegal as Advocate

Duty to Clients, Tribunals and Others

4.01 (1) When acting as an advocate, the paralegal shall represent the client resolutely and honourably within the limits of the law while, at the same time, treating the tribunal and other licensees with candour, fairness, courtesy and respect.

(2) This rule applies to appearances and proceedings before all tribunals in which the paralegal may appear..

(3) This rule does not require a paralegal, except as otherwise provided in these Rules, to assist an adversary or advance matters derogatory to the client’s case.

(4) Without restricting the generality of subrule (1), the paralegal shall,

- (a) raise fearlessly every issue, advance every argument, and ask every question, however distasteful, that the paralegal thinks will help the client’s case;
- (b) endeavour, on the client’s behalf, to obtain the benefit of every remedy and defence authorized by law;
- (c) never waive or abandon a client’s legal rights, for example, an available defence under a statute of limitations, without the client’s informed consent; and
- (d) avoid and discourage the client from resorting to frivolous and vexatious objections, or from attempts to gain advantage from mistakes or oversights not going to the merits, or from tactics designed to merely delay or harass the other side.

The Paralegal and the Tribunal Process

(5) When acting as an advocate, the paralegal shall not,

- (a) abuse the process of the tribunal by instituting or prosecuting proceedings which, although legal in themselves, are clearly motivated by malice on the part of the client and are brought solely for the purpose of injuring the other party;
- (b) knowingly assist or permit the client to do anything that the paralegal considers to be dishonest or dishonourable;
- (c) knowingly attempt to deceive a tribunal or influence the course of justice by offering false evidence, misstating facts or law, presenting or relying upon a false or deceptive affidavit, suppressing what ought to be disclosed, or otherwise assisting in any deception, crime or illegal conduct;
- (d) deliberately refrain from informing the tribunal of any binding authority that the paralegal considers to be directly on point and that has not been mentioned by an opponent;
- (e) appear before a judicial officer when the paralegal, a partner of the paralegal, a paralegal employed by the paralegal firm or the client has a business or personal relationship with the officer that gives rise to, or might reasonably appear to give rise to, pressure, influence or inducement affecting the impartiality of the officer;
- (f) knowingly assert as true, a fact when its truth cannot reasonably be supported by the evidence or as a matter of which notice may be taken by the tribunal;
- (g) endeavour or allow anyone else to endeavour, directly or indirectly, to influence the decision or action of the tribunal or any of its officials in any case or matter by any means other than open persuasion as an advocate;
- (h) knowingly misstate the contents of a document, the testimony of a witness, the substance of an argument or the provisions of a statute or like authority;
- (i) knowingly permit a witness or party to be presented in a false or misleading way or to impersonate another;
- (j) needlessly abuse, hector, harass or inconvenience a witness;
- (k) dissuade a witness from giving evidence or suggest that a witness be absent;
- (l) when representing a complainant or potential complainant, attempt to gain a benefit for the complainant by threatening the laying of a criminal charge or by offering to seek or to procure the withdrawal of a criminal charge; or
- (m) needlessly inconvenience a witness.

Disclosure of Documents

(6) If the rules of a tribunal require the parties to produce documents, a paralegal, when acting as an advocate,

- (a) shall explain to his or her client the necessity of making full disclosure of all documents relating to any matter in issue and the duty to answer to the best of his or her knowledge, information and belief, any proper question relating to any issue in the action;
- (b) shall assist the client in fulfilling his or her obligation to make full disclosure; and
- (c) shall not make frivolous requests for the production of documents or make frivolous demands for information.

Errors and Omissions

(7) A paralegal who does, or fails to do, something which may involve a breach of this rule, shall, subject to rule 3.03 relating to confidentiality, disclose the error or omission and do all that can reasonably be done in the circumstances to rectify it.

Agreement on Guilty Pleas

(8) Before a charge is laid or at any time after a charge is laid, a paralegal acting for an accused or potential accused may discuss with the prosecutor the possible disposition of the case, unless the client instructs otherwise.

(9) A paralegal, on behalf of his or her client, may enter into an agreement with a prosecutor about a guilty plea, if, following investigation,

- (a) the paralegal advises the client about the prospects for an acquittal or finding of guilt;
- (b) the paralegal advises the client of the implications and possible consequences of a guilty plea and particularly of the sentencing authority and discretion of the court, including the fact that the court is not bound by any agreement about a guilty plea;
- (c) the client is prepared voluntarily to admit the necessary factual and mental elements of the offence charged; and
- (d) the client voluntarily instructs the paralegal to enter into an agreement as to a guilty plea.

4.02 Interviewing Witnesses

Interviewing Witnesses

4.02 (1) Subject to subrules (2) and (3), a paralegal may seek information from any potential witness, whether under subpoena or not, but shall disclose the paralegal's interest and take care not to subvert or suppress any evidence or procure the witness to stay out of the way.

(2) A paralegal shall not approach or deal with a person who is represented by another licensee, except through or with the consent of that licensee.

(3) A paralegal retained to act for a party in a matter involving a corporation or organization represented by another licensee shall not, without the other licensee's consent or unless otherwise authorized or required by law,

- (a) approach directors, officers or persons likely involved in the decision-making process for the corporation or organization; or
- (b) approach employees and agents of the corporation or organization whose acts or omissions in connection with the matter may expose the corporation or organization to quasi-criminal, criminal or civil liability.

(4) This rule applies to communications with any person, whether or not a party to a formal adjudicative proceeding, contract, or negotiation, who is represented by a licensee concerning the matter to which the communication relates.

(5) The prohibition on communications with a represented person applies if the paralegal has direct knowledge of the representation or if he or she should be able to infer the representation from the circumstances.

Definition

(6) In this rule,

"organization" includes a partnership, limited partnership, sole proprietorship, association, union, unincorporated group, government department, government agency, tribunal, and regulatory body.

4.03 Communication with Witnesses Giving Testimony

Communication with Witnesses Giving Testimony

4.03 (1) Subject to the direction of the tribunal, a paralegal shall observe the following rules respecting communication with witnesses giving evidence:

1. During examination-in-chief, the examining paralegal may discuss with the witness any matter that has not been covered in the examination up to that point.
2. During examination-in-chief by another licensee of a witness who is unsympathetic to the paralegal's cause, the paralegal not conducting the examination-in-chief may discuss the evidence with the witness.
3. Between completion of examination-in-chief and commencement of cross-examination of the paralegal's own witness, the paralegal ought not to discuss the evidence given in chief or relating to any matter introduced or touched on during the examination-in-chief.
4. During cross-examination by an opposing licensee, the witness's own representative ought not to have any conversation with the witness about the witness's evidence or any issue in the proceeding.
5. Between completion of cross-examination and commencement of a re-examination, a paralegal who is going to re-examine the witness ought not to have any discussion about evidence that will be dealt with on re-examination.
6. During cross-examination by the representative of a witness unsympathetic to the cross-examiner's cause, the paralegal may discuss the witness's evidence with the witness.
7. During cross-examination by the representative of a witness who is sympathetic to that licensee's cause, any conversations ought to be restricted in the same way as communications during examination-in-chief of one's own witness.
8. During re-examination of a witness called by an opposing licensee, if the witness is sympathetic to the paralegal's cause, the paralegal ought not to discuss the evidence to be given by that witness during re-examination. The paralegal may, however, properly discuss the evidence with a witness who is adverse in interest.

(2) With the consent of the opposing licensee or with leave of the tribunal, a paralegal may enter into discussions with a witness that might otherwise raise a question under this rule as to the propriety of the discussions.

(3) This rule applies, with necessary modifications, to examinations out of court.

4.04 The Paralegal as Witness

The Paralegal as Witness

4.04 (1) Subject to any contrary provisions of the law or the discretion of the tribunal before which a paralegal is appearing, the paralegal who appears as an advocate shall not submit his or her own affidavit to the tribunal.

(2) Subject to any contrary provisions of the law or the discretion of the tribunal before which a paralegal is appearing, a paralegal who appears as an advocate shall not testify before the tribunal unless permitted to do so by the rules of the court or the rules of procedure of the tribunal, or unless the matter is purely formal or uncontroverted.

(3) A paralegal who is to testify before a tribunal shall entrust the conduct of the case to another licensee.

(4) A paralegal shall not express personal opinions or beliefs or assert as a fact anything that is properly subject to legal proof, cross-examination or challenge.

4.05 Dealing with Unrepresented Persons

4.05 When a paralegal is dealing on a client's behalf with an unrepresented person, the paralegal shall,

- (a) urge the unrepresented person to obtain independent representation;
- (b) take care to see that the unrepresented person is not proceeding under the impression that his or her interests will be protected by the paralegal; and
- (c) make clear to the unrepresented person that the paralegal is acting exclusively in the interests of the client and accordingly his or her comments may be partisan.

Rule 5 - Fees and Retainers

5.01 Fees and Retainers

Reasonable Fees and Disbursements

5.01 (1) A paralegal shall not charge or accept any amount for a fee or disbursement unless it is fair and reasonable and has been disclosed in a timely fashion.

(2) What is a fair and reasonable fee will depend upon such factors as,

- (a) the time and effort required and spent;
- (b) the difficulty and importance of the matter;
- (c) whether special skill or service was required and provided;
- (d) the amount involved or the value of the subject matter;
- (e) the results obtained;

- (f) fees authorized by statute or regulation; and
- (g) special circumstances, such as the loss of other retainers, postponement of payment, uncertainty of reward, or urgency.

(3) No fee, reward, costs, commission, interest, rebate, agency or forwarding allowance, or other compensation related to his or her employment may be taken by the paralegal from anyone other than the client, without full disclosure to, and the consent of, the client.

(4) In a statement of account delivered to the client, a paralegal shall clearly and separately detail amounts charged as fees and as disbursements.

(5) A paralegal shall not appropriate any funds of the client held in trust, or otherwise under the paralegal's control, for or on account of fees, except as permitted by the by-laws under the *Law Society Act*.

Contingency Fees

(6) Except in quasi-criminal or criminal matters, a paralegal may enter into a written agreement that provides that the paralegal's fee is contingent, in whole or in part, on the successful disposition or completion of the matter for which the paralegal's services are to be provided.

(7) In determining the appropriate percentage or other basis of a contingency fee under subrule (6), the paralegal shall advise the client on the factors that are being taken into account in determining the percentage or other basis, including the likelihood of success, the nature and complexity of the claim, the expense and risk of pursuing it, the amount of the expected recovery, who is to receive an award of costs and the amount of costs awarded.

(8) The percentage or other basis of a contingency fee agreed upon under subrule (6) shall be fair and reasonable, taking into consideration all of the circumstances and the factors listed in subrule (7).

Joint Retainers

(9) If a paralegal is acting for two or more clients, the paralegal shall divide the fees and disbursements equitably between them, unless there is an agreement by the clients otherwise.

Division of Fees

(10) Fees for a matter may be divided between licensees who are not in the same paralegal firm if the client consents and the fees are divided in proportion to the work done and the responsibilities assumed.

Fee Splitting

(11) A paralegal shall not,

- (a) directly or indirectly share, split, or divide his or her fees with any person who is not a licensee; or
- (b) give any financial or other reward to any person who is not a licensee, for the referral of clients or client matters.

Referral Fees

(12) A paralegal who refers a matter to another licensee because of the expertise and ability of the other licensee to handle the matter may accept, and the other licensee may pay, a referral fee if,

- (a) the referral was not made because of a conflict of interest,
- (b) the fee is reasonable and does not increase the total amount of the fee charged to the client; and
- (c) the client is informed and consents.

Rule 6 – Duty to the Administration of Justice

6.01 Encouraging Respect for the Administration of Justice

General Duty

6.01 (1) A paralegal shall encourage public respect for, and try to improve, the administration of justice.

(2) A paralegal shall take care not to weaken or destroy public confidence in legal institutions or authorities by making irresponsible allegations or comments particularly when commenting on judges or members of a tribunal.

Security of Court Facilities

(3) Subject to Rule 3.03 relating to confidentiality, a paralegal who has reasonable grounds for believing that a dangerous situation is likely to develop at a court facility shall inform the local police force and give particulars.

Public Appearances and Statements

(4) So long as there is no infringement of the paralegal's obligation to the client, the paralegal profession, the courts, or the administration of justice, a paralegal may communicate information to the media and may make public appearances and statements.

Unauthorized Practice

(5) A paralegal shall assist in preventing the unauthorized practice of law and the unauthorized provision of legal services.

(6) Without the express approval of a committee of Convocation appointed for the purpose, a paralegal shall not retain, occupy office space with, use the services of, partner with, or employ in any capacity having to do with the provision of legal services, any person who, in Ontario or elsewhere, has been disbarred and struck off the Rolls, has been suspended, has had his or her licence suspended or revoked, has undertaken not to practise, or who has been involved in disciplinary action and been permitted to resign, and has not had his or her licence reinstated.

Rule 7 – Duty to Licensees and Others

7.01 Courtesy and Good Faith

(1) A paralegal shall avoid sharp practice and shall not take advantage of or act without fair warning on slips, irregularities or mistakes on the part of other licensees not going to the merits or involving the sacrifice of a client's rights.

(2) A paralegal shall agree to reasonable requests concerning trial dates, adjournments, waiver of procedural formalities and similar matters that do not prejudice the rights of the client.

(3) A paralegal shall not, in the course of a providing legal services, communicate, in writing or otherwise, with a client, another licensee, or any other person in a manner that is abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a paralegal.

(4) A paralegal shall not engage in ill-considered or uninformed criticism of the competence, conduct, advice or charges of other licensees, but should be prepared, when requested, to represent a client in a complaint involving another licensee.

(5) A paralegal shall answer with reasonable promptness, all professional letters and communications from other licensees that require an answer, and a paralegal shall be punctual in fulfilling all commitments.

(6) A paralegal shall not communicate with or attempt to negotiate or compromise a matter directly with any person who is represented by another licensee, except with the consent of that licensee.

(7) A paralegal shall not use a tape recorder or other device to record a conversation between the paralegal and a client or another licensee, even if lawful, without first informing the other person of the intention to do so.

Rule 8 – Practice Management

8.01 General Obligations

Professional Responsibility

8.01 (1) A paralegal shall assume complete responsibility for all business entrusted to him or her.

Financial Responsibility

(2) A paralegal shall promptly meet financial obligations in relation to his or her practice, including payment of the deductible under a liability insurance policy when properly called upon to do so.

Supervisory Responsibility

(3) A paralegal shall directly supervise staff and assistants to whom particular tasks and functions are delegated.

Delegation

(4) A paralegal shall not permit a non-licensuree,

- (a) to provide legal services;
- (b) to be held out as a licensee; or
- (c) to perform any of the duties that only paralegals may perform or do things that paralegals themselves may not do.

8.02 Advertising

Permitted Advertising

8.02 (1) Subject to subrules (2) through (5), A paralegal or a paralegal firm may advertise their services or fees in any medium including the use of brochures and similar documents, if the advertising,

- (a) is not false or misleading;
- (b) is in good taste and is not such as to bring the paralegal profession or the administration of justice into disrepute; and
- (c) does not compare services or charges with other firms.

Restrictions on Advertising

(2) A paralegal or paralegal firm shall not advertise services that are beyond the permissible scope of practice of a paralegal.

(3) The means by which it is sought to make legal services more readily available to the public, shall be consistent with the public interest and shall not detract from the integrity, independence, or effectiveness of the paralegal profession.

(4) In addition to the requirements of subrule (1), the following conditions apply to an advertisement of fees:

1. An advertisement of fees for consultation or for specific services shall contain an accurate statement of the services provided for the fee and the circumstances, if any, in which higher fees may be charged.
2. The fact that disbursements are an additional cost shall be made clear in the advertisement.
3. An advertisement shall not use words or expressions such as "from...", "minimum" or "... and up", or the like in referring to the fees to be charged.
4. Services covered by advertised fees shall be provided at the advertised rate to all clients who retain the advertising paralegal or paralegal firm during the 30-day period following the last publication of the fees unless there are special circumstances that could not reasonably have been foreseen, the burden of proving which rests upon the paralegal.

(5) A paralegal shall not,

- (a) permit the paralegal's name to appear as representative on any advertising material,
 - (i) offering goods, other than legal publications, to the public, or
 - (ii) offering services, other than legal services, to the public; and
- (b) while in private practice, permit the paralegal's name to appear on the letterhead of a company as being its representative, other than an honorary designation on the letterhead of a nonprofit or philanthropic organization.

8.03 Paralegal Firm Names, Letterheads and Signs

Paralegal Firm Names

8.03 (1) The name of a paralegal firm shall not include any name that is not,

- (a) a name of a current, a retired from practice, or a deceased member of the paralegal firm who is or was qualified to provide legal services in Ontario; or
- (b) a descriptive or trade name that is in keeping with the dignity, integrity, independence and the role of the paralegal profession.

(2) A paralegal who purchases a practice may, for a reasonable length of time, use the words "Successor to _____" in small print under the paralegal's own name.

(3) A paralegal firm name shall not include a descriptive or trade name that is misleading about,

- (a) the identities, responsibilities, or relationships of the paralegals practising under the paralegal firm name; or
- (b) the association or relationship of the paralegal firm with other licensees or with non-licensees.

(4) The name of a paralegal firm shall not include the use of phrases such as "John Doe and Associates", "John Doe and Company" or "John Doe and Partners" unless there are in fact, respectively, two or more other paralegals employed by John Doe in the paralegal firm or two or more partners of John Doe in the paralegal firm.

Letterheads and Signs

(5) The letterhead and the signs identifying the office of a paralegal firm may only include,

- (a) the name of the paralegal firm;
- (b) a list of paralegals who are partners or employees of the paralegal firm;
- (c) the words "licensed paralegal" or "licensed paralegals", as the case may be;
- (d) the words "notary" or "commissioner for taking affidavits" or both, if applicable;
- (e) the words "patent and trade mark agent" if applicable;

- (f) the addresses, telephone numbers, office hours, and the languages in which the paralegal firm is competent and capable of conducting a practice;
- (g) a logo; and
- (h) advertising permitted under these Rules.

(6) A paralegal or paralegal firm may place, after the names on its letterhead, degrees from bona fide universities and postsecondary institutions including honorary degrees, professional qualifications such as the designations of P. Eng., C.A. and M.D. and recognized civil and military decorations and awards.

8.04 Compulsory Errors and Omissions Insurance

Duty to Obtain and Maintain Insurance

8.04 (1) All paralegals practising in Ontario shall obtain and maintain adequate errors and omissions insurance as required by the Law Society.

(2) When a claim of professional negligence is made against a paralegal, he or she shall assist and cooperate with the insurer or other indemnitor to the extent necessary to enable the claim to be dealt with promptly.

(3) In cases where liability is clear and the insurer or other indemnitor is prepared to pay its portion of the claim, the paralegal shall pay the balance.

Rule 9 – Responsibility to the Law Society

9.01 Responsibility to the Law Society

Communications from the Law Society

9.01 (1) A paralegal shall reply promptly to any communication from the Law Society and shall provide a complete response to any request from the Law Society.

Duty to Report Misconduct

(2) A paralegal shall report to the Law Society, unless to do so would be unlawful or would involve a breach of confidentiality between the paralegal and his or her client,

- (a) the misappropriation or misapplication of trust monies by a licensee;
- (b) the abandonment of a law practice by a lawyer or a legal services practice by a paralegal;
- (c) participation in serious criminal activity related to a licensee's practice;
- (d) the mental instability of a licensee of such a serious nature that the licensee's clients are likely to be seriously prejudiced; and
- (e) any other situation where a licensee's clients are likely to be severely prejudiced.

(3) Nothing in subrule (2) is meant to interfere with the paralegal's duty to the client.

(4) A report under subrule (2) must be made in good faith and without malice or ulterior motive.

(5) A paralegal shall attempt to persuade a client who has a claim against an apparently dishonest licensee to report the facts to the Law Society before pursuing private remedies.

(6) If the client refuses to report a claim against an apparently dishonest licensee to the Law Society, the paralegal shall obtain instructions in writing to proceed with the client's private remedies without notice to the Law Society.

(7) A paralegal shall inform the client of the provision of the *Criminal Code of Canada* dealing with the concealment of an indictable offence in return for an agreement to obtain valuable consideration. (section 141)

(8) If the client wishes to pursue a private agreement with the apparently dishonest licensee, the paralegal shall not continue to act if the agreement constitutes a breach of section 141 of the *Criminal Code of Canada*.

Duty to Report Criminal Charges and Convictions

(9) If a paralegal is charged with an offence described in By-Law 8 of the Law Society, he or she shall inform the Law Society of the charge and of its disposition in accordance with the By-Law.

Disciplinary Authority

(10) A paralegal is subject to the disciplinary authority of the Law Society regardless of where the paralegal's conduct occurs.

Professional Misconduct

(11) The Law Society may discipline a paralegal for professional misconduct.

Conduct Unbecoming a Paralegal

(12) The Law Society may discipline a paralegal for conduct unbecoming a paralegal.

Definitions

(13) In subrules (11) and (12),

“conduct unbecoming a paralegal” means conduct in a paralegal's personal or private capacity that tends to bring discredit upon the paralegal profession including,

- (a) committing a criminal act that reflects adversely on the paralegal's honesty, trustworthiness, or fitness as a paralegal,
- (b) taking improper advantage of the youth, inexperience, lack of education, unsophistication, ill health, vulnerability or unbusinesslike habits of another, or
- (c) engaging in conduct involving dishonesty;

“professional misconduct” means conduct by a paralegal that tends to bring discredit upon the paralegal profession, including,

- (a) violating or attempting to violate one of these Rules, a requirement of the *Law Society Act* or the regulations or by-laws under that Act,

- (b) knowingly assisting or inducing another licensee to violate or attempt to violate these Rules, a requirement of the *Law Society Act* or the regulations or by-laws under that Act,
- (c) misappropriating or otherwise dealing dishonestly with a client's or a third party's money or property,
- (d) engaging in conduct that is prejudicial to the administration of justice,
- (e) stating or implying an ability to influence improperly a government agency or official,
or
- (f) knowingly assisting a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.